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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 08 2007

SRC 05 261 51837

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Chemistry from the University of South Carolina (USC). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not contest that the petitioner works in an area of intrinsic merit, surface chemistry, or that the proposed benefits of her work, improved nanocatalysts for industrial and homeland security purposes, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner obtained her Ph.D. in 2004 from USC. While at that institution, she collaborated with [redacted] an associate professor at USC, and [redacted], the Chemical Terrorism Laboratory Coordinator for South Carolina's Department of Health and Environmental Control. After receiving her degree, the petitioner accepted a postdoctoral appointment at Oakridge National Laboratory, where she works under the supervision of [redacted] in [redacted] 's group.

The petitioner submitted several letters discussing her work performed at USC and Oakridge National Laboratory. The director concluded that these letters mostly speculated as to the future applications of the petitioner's work. On appeal, counsel asserts that the director mischaracterized the letters, which discussed the petitioner's past work. We will discuss the letters below. We note, however, that it is insufficient to demonstrate that the petitioner has completed work that is merely predicted to have an influence on the field. The influence must already be apparent.

[redacted] discusses the petitioner's graduate research at USC. Specifically, the petitioner "prepared metal nanoparticles for use as catalysts to decompose compounds that simulate toxic organophosphonates used as chemical warfare agents." The petitioner demonstrated that the chemistry of the nanoparticles differs from the bulk materials, providing "important insight into the relationship between the structure and size of the nanoparticles and their reactivity." Specifically, the petitioner's investigations reflected that copper (Cu) and nickel (Ni) particles are able to effectively decompose dimethyl methylphosphonate (DMMP) into nontoxic gases. According to another professor at USC, [redacted], DMMP is a nontoxic compound used to simulate the reactivity of highly toxic organophosphonates found in pesticides and chemical warfare agents. [redacted] asserts that based on these results, the petitioner has proposed that the ratio she used with Cu and Ni "can also control particle size, particle density and size distribution for a variety of other metals supported on titania or other oxide surfaces."

[redacted] predicts that the petitioner's work "will" lead to improved use of current catalysts and development of new catalysts and that the petitioner's advanced nanocatalysts "could dramatically improve industrial processes that utilize such catalysts." [redacted] asserts that the petitioner's contribution to the understanding of the relationship between size and structure "will increase

efficiency for existing industrial catalysts and eventually, will facilitate the development of new catalysts." [redacted] further speculates that the potential new materials "will also play a crucial role in the decomposition of chemical warfare agents, as well as being useful for the remediation of toxic wast4e in the environment that are of industrial origin."

[redacted] explains that at Oak Ridge National Laboratory, the petitioner, using rhodium particles (Rh) supported on single-crystal ceria films, found that methanol and formaldehyde decompose on the cerium oxide films via different reaction intermediates, depending on the oxidation states of the cerium oxide substrate itself. [redacted] concludes that these results "are critical to the development of new catalysts that can be used in the industrial processes such as the production of functionalized hydrocarbons in the near future." While [redacted] indicates that the manuscripts reporting these results had yet to be published as of the date of filing, he asserts that he and the petitioner have presented six talks at various national meetings and symposia. [redacted] asserts that this work relates to auto exhaust and "will prove to be of value to industrial processes and automobiles of the future that will emit less pollution into the atmosphere."

[redacted] also discusses a separate project on which the petitioner has been working at Oak Ridge National Laboratory. Specifically, the petitioner used the sensitivity of scanning tunneling microscopy (STM) to capture pictures of benzene molecules absorbed at the atomic titanium rows on the surface. This research has industrial applications, such as the study of the "methanol reaction that forms byproducts such as formaldehyde, carbon monoxide, etc." [redacted] states:

> The microscopic images captured by STM can show the characteristics of the reaction process, like reaction site, formation of products, and reaction mechanism on the molecular level. Such research is considered groundbreaking and will have an impact on the catalysis community.

[redacted], a staff member at Oak Ridge National Laboratory, asserts that the petitioner's work with STM "will provide the fundamental picture of the catalytic processes of the oxide-supported nanoscale metal particles at the atomic level, which will lead to the development of new catalysts with higher efficiency and selectivity."

More specifically, [redacted] states:

> [The petitioner's] personal expertise has allowed us to use Palladium (Pd) nanoscale particles supported on a rutile TiO_2 (110) single crystal surface in ultrahigh vacuum as a model catalytic system in our current project. She has employed STM to characterize the surface structure of the TiO_2 substrate and the morphology of Pd particles and has successfully captured pictures of benzene molecules adsorbed on the surface using STM. The pictures clearly show that the benzene molecules absorb on the titanium atomic rows on the surface. The images also reveal that the benzene molecules are very mobile and do not interact strongly with the surface.

[redacted] indicates that this work had only been submitted for presentation at a conference but opines that the work, which is continuing, "will have a great impact on the catalysis research and development."

The above letters are all from the petitioner's immediate circle of colleagues. While these letters are useful in documenting the nature of the petitioner's work and her role on various projects, they cannot, without additional supporting evidence, demonstrate her impact beyond this circle of colleagues. In response to the director's request for additional evidence, the petitioner did submit independent letters.

[redacted] a senior research scientist and spokesperson of the Catalysis Group of the Chemistry Department at Brookhaven National Laboratory, discusses the petitioner's research with Cu and Ni. While the director expressed concern that [redacted] does not explain how he became aware of the petitioner's work, as noted by counsel, the record contains a January 2005 article by [redacted] that cites the petitioner's work. [redacted] concludes that the petitioner's work with Cu and Ni "has paved the way for future research on supported metal nanoparticles as a means of decomposing toxic chemical warfare agents." In addition, [redacted] asserts that an improved understanding of the relationship between the metal particle size and the reactivity "will contribute to the improving efficiency for existing industrial catalysts and eventually to the development of new catalytic materials." This language is almost identical to [redacted]'s conclusions, quoted above. In his article, [redacted] merely cites the petitioner's 2004 article as one of three articles for the proposition that "STM studies have shown that metal particles deposited on TiO_2 (110) have structures and morphologies different from those of metal single crystals."

Finally, [redacted] speculates that the petitioner's current work "will prove to be valuable to industrial processes and the development of the less-polluting automobile of the future" and concludes that her work at Oak Ridge National Laboratory "is among the most advanced of its kind and is very important to the achievement of national scientific research priorities." [redacted] however, provides no examples of how the petitioner's work has already impacted the field.

[redacted] a Distinguished Member of the Technical Staff at Sandia National Laboratories and a recruiter for [redacted] asserts that he mentored [redacted] and became acquainted with the petitioner at a conference. [redacted], noting his experience reviewing candidates for research positions at Sandia, asserts that the petitioner "competes at the highest national and international levels in her technical area, surface chemistry." While [redacted] praises the petitioner's current mentors at Oak Ridge National Laboratory, he does not provide specific examples of how the petitioner's work has already influenced the field.

Finally, the petitioner submitted a letter from [redacted], a professor at the State University of New Jersey Rutgers and former Director of the Laboratory for Surface Modification at that university. [redacted] asserts that the petitioner's graduate work shed light on a subject about

which little was known, the fundamental surface chemistry of oxide-supported metal particles with respect to their sizes and structures. [redacted] opines that the petitioner's work has provided important information on the subject and "will have a significant impact on future research developing new classes of catalysts with potential homeland security and industrial applications."

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In evaluating the reference letters, we note that letters containing mere assertions of potential industry or government application are less persuasive than letters that provide specific examples of how the petitioner has already influenced the field.

While the letters are from distinguished members of the petitioner's profession, the record lacks evidence from the industries the petitioner's work is claimed to impact, such as the automobile industry. In support of the above letters, the petitioner submitted evidence of her publications, presentations, memberships and honors. The petitioner listed 16 published articles on her curriculum vitae. The record contains evidence of 14 published articles. The petitioner also submitted evidence of several oral and poster presentations.

Several references attest to the significance of the publications that carried these articles and the number of articles. We will not, however, presume the influence of a given article from the publication in which it appeared or presume that every prolific writer warrants a waiver of the alien employment certification in the national interest. At issue is the impact of the petitioner's individual articles.

On appeal, counsel asserts that the petitioner has been cited 60 times. This number includes all of the citations in the aggregate, including multiple self-citations by the petitioner herself and counts several citing articles multiple times as a single article often cites more than one of the petitioner's articles. While self-citation is a normal and expected practice, it cannot demonstrate the petitioner's influence on the field. As of the date of filing, nine of the petitioner's articles had been cited. Eliminating self-citations, no single article had been cited more than five times and three of the petitioner's cited articles had been cited only once. Moreover, several of the independent citations are duplicates. Considering the citations in the aggregate, as counsel does, and excluding self-citations and duplicate cites, we count only 15 independent articles that had cited the petitioner's nine articles as of the date of filing. Even as of the date of appeal, while the petitioner accumulated

additional citations, no single article by the petitioner had received more than seven independent citations.

The petitioner submitted evidence of her membership in the American Chemical Society (ACS) and the American Vacuum Society (AVS). The petitioner did not submit any evidence that either membership is indicative of an influence in the field rather than the payment of dues and education and/or experience in the field.

The petitioner also submitted evidence that she received an AVS Graduate Research Award. The awards "recognize and encourage excellence in graduate studies in the sciences and technologies of interest to the AVS." The petitioner also received a graduation day award from USC. On appeal, counsel asserts that the director improperly dismissed the AVS award as a graduate student award. Counsel notes that the award was issued by a national entity and considers graduate students from all over the world. It remains, however, that the pool of competitors for this recognition includes only graduate students. The petitioner did not compete against professionals already working in the field.

Regardless, both professional memberships and recognition for achievements from professional organizations are two criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting two, or even the requisite three, criteria for this classification warrants a waiver of that requirement in the national interest. *See generally, Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. At best, the petition was filed prematurely, before the petitioner's work could be applied or even garner any interest in the automobile or other industry or in the homeland security context.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.